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September 6, 2018

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ELECTRONICALLY FILED VIA ECFS

Re CC Docket No. 02-6
In the matter of Request for Review by Detroit Service Learning Academy
of a Decision of the Universal Service Administrator
Funding App #161058184; FRNs 1699135597, 1699135599, and 1699135799;
as cited on FCC Form 486 #57557

Dear Secretary Dortch,

With this letter Detroit Service Learning Academy ("DSLA") appeals¹ a decision by the Universal Service Fund Administrator ("USAC")² under the Schools and Libraries Universal Service Support Mechanism (commonly known as "E-Rate") to deny its request on appeal for USAC³ to set the funding Service Start Date to the first day of the funding year for the captioned Funding Requests (the "Funding Requests").

BACKGROUND

Applicant Detroit Service Learning Academy. DSLA is a unique educational institution which integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities. As members of the community, DSLA students have the responsibility to

¹ Any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may then seek review from the Federal Communications Commission; see 47 CFR § 54.719(b).

² USAC's EPC system assigned appeal #100785 to DSLA's appeal. On or about 7/10/2018 the EPC appeal record reported that a Revised Funding Commitment Decision Letter was issued. In the EPC Newsfeed is a 7/9/2018 post to which is attached a spreadsheet document which addresses the disposition of the appeal: "Our records show that your appeal was filed more than 60 days after the date your decision letter was issued. Your appeal was filed on 05/07/2018. The FCC Form 486 Notification Letter was issued on 10/02/2017. Federal Communications Commission (FCC) rules require appeals to be filed within 60 days of the date on the decision letter being appealed. FCC rules do not permit the Universal Service Administrative Company (USAC) to consider your appeal. Therefore, the appeal was denied."

³ See 5/4/2018 appeal letter to USAC attached as Attachment 1

live the core values of wisdom, justice, integrity, love, compassion, respect, and courage. DSLA relies on funding under the Schools and Libraries Universal Service Support Mechanism (commonly known as “E-Rate”) as a critical component of the financial resources it requires to fulfill its educational mission.

FCC Form 486 filing. USAC records show that on December 12, 2016, USAC Issued a Funding Commitment Letter committing funding for each of the Funding Requests⁴. According to USAC procedures DSLA should have filed FCC Form 486 citing each funded Funding Request not later than April 11, 2017⁵.

On August 4, 2017, DSLA completed and certified FCC Form 486 No. 57577 citing each of the Funding Requests, and stating a Service Start Date of July 1, 2016. The apparent late filing came as a result of staff shortages, staff changes, and confusion over the filing deadline – personnel matters that are not fully within the control of any enterprise. However, DSLA’s concerns about actually having put funding at risk was mitigated by its cognizance of the policy set in the *Archdiocese of New Orleans Order*⁶, in which the Federal Communications Commission (the “Commission”) directed USAC to set the Service Start Date to the first day of the funding year in cases of late-filed FCC Forms 486 that were filed no later than 120 days after the last day to receive service for the funding request at issue, and where the applicants have demonstrated good cause for the late filing.

DSLA conscientiously took steps to monitor the status of the late-filed FCC Form 486, as DSLA was aware of the Commission’s requirement to file any necessary request for review not later than 60 days after the date of an adverse USAC decision⁷. In an abundance of caution, DSLA monitored the form’s status using three independent sources.

First, DSLA monitored received email for any notification that USAC had completed its review of the FCC Form 486. To the best of its knowledge and belief, DSLA never received any notification that USAC had completed its review of the FCC Form 486.

Second, DSLA regularly queried the FCC Form 486 status through the submission of a query through the FRN Status Tool⁸. In each query file produced by the FRN Status Tool, the 486 Service Start Date field was blank, indicating that USAC’s review of the FCC Form 486 was not yet complete and that USAC had not yet determined a Service Start Date for the underlying Funding Requests.

⁴ See “FCDL Date” column of 2/21/2018 FRN Status Tool download (attached hereto as Exhibit A of Attachment 1).

⁵ “FCC Form 486 must be received or postmarked no later than 120 days after the Service Start Date shown on the FCC Form 486 or 120 days after the date of the FCDL, whichever is later”, USAC Schools and Libraries website at <https://www.usac.org/sl/applicants/step05/form-486.aspx> (retrieved 5/3/2018).

⁶ See *Archdiocese of New Orleans et al*, 31 FCC Rcd 11747 (2016).

⁷ See 47 CFR §54.720(b): “An affected party requesting review of an Administrator decision by the Administrator pursuant to §54.719(a), shall file such a request within sixty (60) days from the date the Administrator issues a decision.”

⁸ E.g., see blank values in “486 Service Start Date” column of 2/21/2018 FRN Status Tool download (attached hereto as Exhibit A of Attachment 1).

Third, DSLA regularly checked the status of the FCC Form 486 via a query of Funding Year 2016 FCC Form 486 status through USAC's E-Rate Productivity Center ("EPC") online system⁹. In each query EPC reported a status of "In Review", indicating that USAC's review of the FCC Form 486 was not yet complete and that USAC had not yet determined a Service Start Date for the underlying Funding Requests.

In late February, 2018, DSLA became concerned about what seemed to be an unusually long time for the processing of an FCC Form 486 submitted six months earlier, and (through its consultant) submitted inquiries to USAC.

On March 6, 2018, USAC for the first time notified DSLA of its decision to set the Service Start Date for each Funding Request to April 6, 2017¹⁰. USAC explicitly conceded that its online EPC system reports an FCC Form 486 status of "In Review", even after USAC had completing of the form. USAC furthermore explicitly conceded that its FRN Status Tool provided funding request records with blank Form 486 Service Start Date values, even after USAC had processed the form. In other words, USAC's own systems continued to consistently confirm that *USAC was still reviewing the FCC Form 486, and that USAC had not yet completed processing of the form.*

Timeliness of appeal submission to USAC. DSLA submitted its appeal to USAC on May 4, 2018. DSLA was first notified on March 6 that USAC had adjusted the Service Start Date for the underlying Funding Requests; therefore, DSLA's appeal to USAC was timely submitted within 60 days of DSLA's receipt of notification of USAC's decision.

It its decision on appeal USAC disputes that March 6 is the date from which the 60-day appeal period begins. USAC's position (as stated in its decision) is that the 60-day appeal period begins on October 2, 2017 – the date on which USAC claims it issued an FCC Form 486 Notification Letter. In its decision USAC did not explicitly address the matter of the numerous times subsequent to October 2 that USAC notified DSLA, via DSLA's queries to USAC online systems – accessing both USAC's online Data Status Tool, *and also* USAC's online E-Rate Productivity Center – *that FCC Form 486 #57557 was still under review and that processing was not yet complete.*

Timeliness of instant request for review. DSLA submits this request for review within 60 days of USAC's July 9 decision to deny DSLA's appeal.

ANALYSIS

Due to factors not reasonably within its control, DSLA was unable to fully comply with the requirement to file Form 486 by the USAC procedural 120-day limit after the latter of the service start date and the Funding Commitment Decision Letter date. To the best of its knowledge DSLA is otherwise in full compliance with applicable FCC rules and USAC procedures.

⁹ E.g., see screen capture retrieved 2/22/2018 showing a status of "In Review" for FCC Form 486 No. 57557 (attached hereto as Exhibit D of Attachment 1).

¹⁰ See USAC Schools and Libraries Division Client Service Bureau response dated March 6, 2018, in Case #22-964921 (attached hereto as Exhibit E of Attachment 1).

In *Alaska Gateway*¹¹ the Bureau found that where special circumstances are present and an FCC Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's FCC Form 472 reimbursement application without a postponement of the funding start date. The Bureau noted that in these cases the applicants missed a procedural deadline and did not violate a substantive rule. The Bureau has consistently applied the *Alaska Gateway* standard in subsequent orders granting waivers of the Form 486 filing deadline, including *State of Arkansas Department of Information Systems*¹², *Alcona County Library*¹³, *Children of Peace School*¹⁴, *Academy St. Benedict – Stewart*¹⁵, *Bancroft Neurohealth*¹⁶, *Archdiocese of Chicago School*¹⁷, *Beebe Public Schools*¹⁸, and *Albertville City Schools*¹⁹.

The cited orders are consistent with *Bishop Perry*²⁰, where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Telecommunications Act of 1996 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

The Bureau further noted in *Alaska Gateway* and in *Alcona County Library* that denying the petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. That would certainly be the case if DSLA were to be denied the opportunity to request reimbursement for its eligible expenses for the entirety of the funding year. The consequences of a denial of funding would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

The Bureau recently gave notice in *Archdiocese of New Orleans*²¹ that a less-flexible standard will apply to appeals of USAC's denial of requests to late-file FCC Forms 486 when initial appeals are filed on or after January 30, 2017, and in the same order the Bureau stated that the *Alaska Gateway* standard would apply to appeals filed prior to that date. DSLA filed its initial appeal with USAC on May 4, 2018; therefore, the *Alaska Gateway* standard applies to our request for review of USAC's denial of our initial appeal.

Although USAC takes the position that DSLA did not file its appeal with them within 60 days of notification of USAC's decision, DSLA finds no evidence that it actually received

¹¹ *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (2006)

¹² *State of Arkansas Department of Information Systems et al*, 23 FCC Rcd 9373 (2008)

¹³ *Alcona County Library et al*, 23 FCC Rcd 15500 (2008)

¹⁴ *Children of Peace School et al*, 25 FCC Rcd 5492 (2010)

¹⁵ *Academy St. Benedict – Stewart et al*, 25 FCC Rcd 17309 (2010)

¹⁶ *Bancroft Neurohealth et al*, 26 FCC Rcd 10948 (2011)

¹⁷ *Archdiocese of Chicago School*, 27 FCC Rcd 200 (2012)

¹⁸ *Beebe Public Schools*, 27 FCC Rcd 3930 (2012)

¹⁹ *Albertville City Schools*, 27 FCC Rcd 6094 (2012)

²⁰ *Bishop Perry Middle School et al*, 21 FCC Rcd 5316 (2006)

²¹ See *Archdiocese of New Orleans et al*, 31 FCC Rcd 11747 (2016)

any FCC Form 486 Notification Letter. Furthermore, in an abundance of caution, DSLA on a regular basis conscientiously checked two separate USAC online tools and systems – the FRN Status Tool and the EPC system – and each of those systems consistently reported on numerous occasions that USAC had not yet completed processing of FCC Form 486 #57557. Even if one were to find that an FCC Form 486 Notification Letter had somehow been delivered to DSLA, each and every query to USAC’s systems which reported that the FCC Form 486 *had not* been processed should be considered an update or amendment to the FCC Form 486 Notification Letter, nullifying any notification that processing had been complete.

Finally, it should be emphasized that there is apparently no question of fact as to whether the FCC Form 486 had been submitted early enough to qualify for the relief granted for certain late-filed FCC Forms 486 in *Archdiocese of New Orleans*. The only question is whether – in light of USAC’s consistent assurance (through its online systems that it had not yet completed processing of the FCC Form 486) that it was still reviewing the FCC Form 486 filing – DSLA’s appeal to USAC is deemed to be timely filed.

REQUEST FOR RELIEF

For the reasons stated in this letter, DSLA respectfully requests that the Bureau direct USAC to set the Service Start Date to the first day of the funding year for each cited funding request. We also ask that the Bureau, consistent with precedent, direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486²², including the deadline for invoicing USAC for reimbursement.

E-RATE SUPPORT SERVICES



David A. Behar
General Manager

Attached:

Attachment 1: May 4, 2018 letter to USAC’s School’s and Libraries
Correspondence Unit, including five exhibits and two data files identified in that
letter

²² E.g., see *Children of Peace School et al*, footnote 24